

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO**

<b>JOSHUA I. SIMPSON,</b>	:	
	:	
<b>Appellant,</b>	:	<b>Case No. 14CVF-04-4523</b>
	:	
<b>vs.</b>	:	<b>JUDGE TIMOTHY S. HORTON</b>
	:	
<b>OHIO STATE UNEMPLOYMENT</b>	:	
<b>COMPENSATION REVIEW, <i>et al.</i>,</b>	:	
	:	
<b>Appellees.</b>	:	

**DECISION AND ENTRY**

**AFFIRMING THE COMMISSION’S DECISION DISALLOWING  
REQUEST FOR REVIEW OF APRIL 2, 2014**

This matter is before the Court on Appellant Joshua Simpson’s (“Appellant”) appeal from the Ohio Unemployment Compensation Review Commission’s ( the “Commission”) April 2, 2014 Decision Disallowing Request for Review. In this Appeal, the Appellant named the Director of the Ohio Department of Job and Family Services (hereinafter referred to as the “Appellee”) along with a number of other state agencies and his former employer.

Appellant did not file a Brief, but Appellant’s Notice of Appeal contained operative facts associated with Appellant’s claim that the Appellee erred in disallowing review of his appeal. The Appellee filed its Brief on July 10, 2014. For the reasons that follow, this Court **AFFIRMS** the April 2, 2014 Decision Disallowing Request for Review.

**I. STATEMENT OF THE FACTS**

This appeal arises as a result of the Commission’s denial of Appellant’s requested review of a determination that the Appellant did not timely file his administrative appeal.

On December 24, 2013 the Appellee issued an initial determination that held that the Appellant was not entitled to benefits. The Appellant timely appealed that holding. On January 27, 2014 the Appellee issued its redetermination that was also adverse to the Appellant. On February 21, 2014 the Appellant filed his appeal of the January 27, 2014 redetermination.

The matter was transferred to the Commission on February 21, 2014. A hearing was conducted on March 6, 2014. The Hearing Officer asked the following two critical questions concerning the timing of the appeal<sup>1</sup>:

2 | Q: Did you receive a copy of the director's redetermination that was  
3 | issued on January 27, 2014?

4 | A: Um I don't remember.

5 | Q: Did you file an appeal to that decision?

6 | A: I think so. I got called so.

7 | Q: Well that's the issue before me today, whether or not you filed a  
8 | timely appeal so are, do you know whether or not you filed an appeal?

9 | A: Yes I did.

(Hearing Tr., page 5). The Hearing Officer then asked Appellant when he file said appeal, but Appellant was unable to answer that question.

The Appellant then testified that he was confident that his appeal was timely because the Appellee called him to let him know that his original filing was "corrupted" and that Appellee could not read it. (Hr. Tr. at 5:18-20.) Appellant testified that he eventually was able to speak with the Appellee's representative and was informed to fax his appeal, which he promptly did. (Hr. Tr. at 6:1-3.)

The following exchange is found on page 6 of the hearing transcript:

4 | Q: Do you possess any evidence to show that the, there was an appeal  
5 | that was timely filed um online?

6 | A: Um other than the submission for the uh online uh appeal thing I,  
7 | don't, I wouldn't know of any other evidence. Th, the only evidence  
8 | that, that I would have would be the uh evidence that was originally uh  
9 | that the file which is why I got the phone call from the lady who told

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<sup>1</sup> The darker text is a 'copy image' from the transcript filed with the Court.

10 me it was corrupt and so she called me and told me that she had  
11 received something she just couldn't read it because it was corrupt and  
12 so.

13 Q: (inaudible).

14 A: That's when.

15 Q: Go ahead.

16 A: I'm sorry, um so that's when, that's when I tried to get a hold of  
17 her because she called me and left a message. That's when I tried to  
18 call her back and get a hold of her and it was a process to get a hold  
19 of her but once I finally did get a hold of her I was able to uh get  
20 more information in regards to what I could do to, to resubmit that  
21 information and that's what I did. She told me to uh fax, just use the  
22 faxing method. So that day um once I got a hold of her uh I went  
23 directly to uh fax the information over to you, to the unemployment.

24 Q: Did you receive a confirmation number from the unemployment office  
25 when you filed that appeal online?

26 A: I, I, I, I may have. I'm not sure.

The Hearing Officer went on to explain that had he filed the appeal as he stated, he would have received a confirmation number from the Appellee stating that it had received his filing. The Hearing Officer basically gave the Appellant a way to produce some independent evidence of his alleged prior filing. The Appellant eventually admitted that he could not find the confirmation. (Hr. Tr., at 7:24-26.) The hearing was concluded shortly thereafter.

The Hearing Officer issued his Decision and held that under the facts as advanced by the Appellant, the only way he could overcome the late filing was to show independent evidence of his alleged attempt to timely file. He failed to produce the independent evidence so the Hearing Officer determined that the filing was in fact untimely. Appellant appealed the Hearing Officer's Decision, and on April 2, 2014 the Commission issued its decision to disallow a review.

The Appellant did not file a Brief. The Appellee timely filed a Brief asserting that pursuant

to the rules and statutes of Ohio, the Appellant's appeal was untimely and therefore, this Court should affirm the Decision to Disallow.

This matter is ready for review.

## **II. STANDARD OF REVIEW**

R.C. 4141.282(H) sets forth the standard of review that this Court must apply when considering appeals of decisions rendered by the Commission. R.C. 4141.282(H) provides:

If the court finds that the decision of the commission was unlawful, unreasonable, or against the manifest weight of the evidence, it shall reverse, vacate, or remand the matter to the commission. Otherwise, the court shall affirm the decision of the commission.

The Ohio Supreme Court stated that “[t]he board’s role as fact finder is intact; a reviewing court may reverse the board’s determination only if it is unlawful, unreasonable, or against the manifest weight of the evidence.” *Tzangas, Plakas & Mannos v. Ohio Bur. Of Emp. Serv.*, 73 Ohio St.3d 694,697, 653 N.E.2d 1207 (1995). The Hearing Officer and the Commission are primarily responsible for the factual determinations and judging the credibility of the witnesses. *Brown-Brockmeyer Co. v. Roach*, 148 Ohio St. 511 (1947); *Angelkovski v. Buckeye Potato Chips*, 11 Ohio App.3d 159,162, 463 N.E.2d 1280 (10th Dist. 1983).

More specifically:

The Commission and its referees are the triers of fact. Therefore, the common pleas court acts as an appellate court and is limited to determining whether the Commission's decision was supported by some competent and credible evidence. The common pleas court may not substitute its judgment for that of the hearing officer or the board. (Internal citations omitted.)

*Simon v. Lake Geauga Printing Co.*, 69 Ohio St.2d 41, 45, 23 O.O.3d 57, 430 N.E.2d 468 (1982).

Hence, this Court will defer to the Hearing Officer's and the Commission's determination of purely factual issues when said issues address the credibility of the witnesses and the weight of the evidence. *Angelkovski v. Buckeye Potato Chips, supra*, at 162.

Additionally, this case deals with the issue of the timeliness of Appellant's appeal at the administrative level. R.C. 4141.281 (“Appeal to director”) states:

**(A) APPEAL FILED**

Any party notified of a determination of benefit rights or a claim for benefits determination may appeal within twenty-one calendar days after the written determination was sent to the party or within an extended period as provided under division (D)(9) of this section.

\* \* \*

**(D)(9) EXTENSION OF APPEAL PERIODS**

The time for filing an appeal or a request for review under this section or a court appeal under section 4141.282 of the Revised Code shall be extended in the manner described in the following four sentences. When the last day of an appeal period is a Saturday, Sunday, or legal holiday, the appeal period is extended to the next work day after the Saturday, Sunday, or legal holiday. When an interested party provides certified medical evidence stating that the interested party's physical condition or mental capacity prevented the interested party from filing an appeal or request for review under this section within the appropriate twenty-one-day period, the appeal period is extended to twenty-one days after the end of the physical or mental condition, and the appeal or request for review is considered timely filed if filed within that extended period. When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive the determination or decision within the applicable appeal period under this section, and the director or the commission finds that the interested party did not actually receive the determination or decision within the applicable appeal period, then the appeal period is extended to twenty-one days after the interested party actually receives the determination or decision. When an interested party provides evidence, which evidence may consist of testimony from the interested party, that is sufficient to establish that the party did not actually receive a decision within the thirty-day appeal period provided in section 4141.282 of the Revised Code, and a court of common pleas finds that the interested party did not actually receive the decision within that thirty-day appeal period, then the appeal period is extended to thirty days after the interested party actually receives the decision.

The Appellee has created an administrative rule that also must be considered in this appeal. Please note the following from O.A.C. §4141-19-01(C):

(C) Where the department has not received, has disregarded as unintelligible or incomplete, or is unable to locate an appeal, said appeal will be considered to have been received timely if the sender provides independent verification to demonstrate that the appeal was mailed, submitted electronically or filed in person within the statutorily prescribed time frame.

From within this framework, this Court will render its decision.

### **III. ANALYSIS**

This case turns on the holding made by the Hearing Officer that Appellant failed to meet the standard set forth in O.A.C. §4141-19-01(C) because he did not provide any independent evidence that he in fact timely filed his appeal. Having held that the appeal was untimely, the Appellant was given the opportunity to explain why his appeal was timely. This was the purpose of the hearing conducted on March 6, 2014. Appellee asserts that there was no evidence or record of the Appellee ever receiving the appeal within the requisite timeframe.

Appellant contends that he did submit the appeal online and on-time. Thus, the factors in the extension provisions of R.C. 4141.281(D)(9) do not apply to the facts of this case and were not relevant to the Hearing Officer's Decision.

By way of an administrative code, the Appellee has created another route for an Appellant to overcome a late filed appeal. The Appellee has indicated a willingness to expand upon the reasons noted in R.C. 4141.281(D)(9) to include giving the opportunity to individuals, such as the Appellant, the right to prove that they did file the appeal timely even when there is no evidence of that filing contained within the Appellee's records. This administrative exception requires that there be some independent evidence. Here, Appellant could not produce any independent verification that he did in fact upload the appeal timely. The Hearing Officer attempted to help him by seeking information concerning the existence of any confirmation number. Again, the Appellant was unable to produce that information. In the end, the Hearing Officer was left with only the Appellant's testimony. Hence, pursuant to the rules of the agency, the Hearing Officer Decision was appropriate.

The Commission's Decision Disallowing the Request for Review is not unlawful, unreasonable, or against the manifest weight of the evidence.

**IV. DECISION**

Based upon the foregoing, the Decision Disallowing Request for Review mailed April 2, 2014 is hereby **AFFIRMED**. Costs to the Appellant.

**THIS IS A FINAL APPEALABLE ORDER.**

**IT IS SO ORDERED.**

**JUDGE TIMOTHY S. HORTON**

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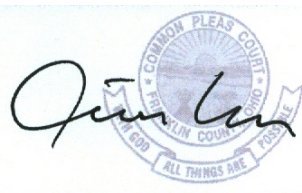
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Franklin County Court of Common Pleas

**Date:** 08-18-2014  
**Case Title:** JOSHUA I SIMPSON -VS- OHIO STATE UNEMPLOYMENT  
COMPENSATION RVW ET AL  
**Case Number:** 14CV004523  
**Type:** DECISION/ENTRY

It Is So Ordered.

A handwritten signature in black ink is written over a blue circular seal. The seal contains the text "FRANKLIN COUNTY OHIO" around the top and "ALL THINGS ARE POSSIBLE" around the bottom. The signature is written in a cursive style.

/s/ Judge Timothy S. Horton



Court Disposition

Case Number: 14CV004523

Case Style: JOSHUA I SIMPSON -VS- OHIO STATE  
UNEMPLOYMENT COMPENSATION RVW ET AL

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes